

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

MARIA TINOCO
and JESUS TINOCO,

Plaintiffs,

v.

Civ. No. 13-918 KG/GJF

DEPUTY JONATHAN BARRERAS, et al.,

Defendants.

ORDER GRANTING MOTION TO COMPEL

THIS MATTER is before the Court upon Defendants’ “Motion to Compel: Ordering Plaintiffs to Fully Respond to County Defendants’ First Set of Discovery Requests” (“Motion”). ECF No. 49. The Motion was filed with this Court on March 17, 2016. *Id.* Based on the applicable rules, Plaintiffs’ response was due on April 4, 2016. *See* D.N.M.LR-Civ. 7.4(a) (“A response must be served within fourteen calendar days . . . [t]hese time periods are computed in accordance with FED. R. CIV. P. 6(a) and (d)”; FED. R. CIV. P. 6(a) and (d) (providing days that are excluded from the computation of time and allowing an additional three days to file for most forms of service). As of this date, however, no response has been filed (nor any extension of time requested), even after County Defendants filed a “Notice of Briefing Complete” in which they emphasized Plaintiffs’ failure to file a response. *See* ECF No. 52 at 2-3.

Where a party fails to respond to a motion, local rules consider the inaction to be the equivalent of “consent to grant the motion.” D.N.M.LR-Civ. 7.1(a). Accordingly, the Court **GRANTS** the motion.

The Court further **ORDERS** Plaintiffs – **not later than April 29, 2016** – to comply in

every respect with the relief sought in the Motion to Compel, to wit:

Plaintiff Jesus Tinoco **SHALL** provide complete answers to County Defendants' First Set of Interrogatories to Plaintiff Jesus Tinoco, specifically Interrogatory Nos. 17, 18, 20, and 23;


Plaintiff Jesus Tinoco **SHALL** provide complete answers to County Defendants' First Set of Requests for Production to Plaintiff Jesus Tinoco, Nos. 17, 20, and 23;

Plaintiff Maria Tinoco **SHALL** provide complete answers to County Defendants' First Set of Interrogatories to Plaintiff Maria Tinoco, specifically Interrogatory Nos. 20 and 21; and

Plaintiff Maria Tinoco **SHALL** provide complete answers to County Defendants' First Set of Requests for Production to Plaintiff Maria Tinoco, Nos. 17, 20, and 23.

The Court notes that County Defendants have also requested an order requiring Plaintiffs to pay the attorneys' fees and costs associated with the drafting and filing of the Motion to Compel. *See* ECF No. 49 at 18. Under Federal Rule of Civil Procedure 37(a)(5), the Court ordinarily is required to grant such relief unless "(i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's non-disclosure, response, or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust." FED. R. CIV. P. 37(a)(5). Accordingly, the Court **ORDERS** Plaintiffs – **not later than April 18, 2016** – to **SHOW CAUSE** in writing why the Court should not order them to pay County Defendants' costs and attorneys' fees associated with drafting and filing the Motion to Compel.

IT IS SO ORDERED.



THE HONORABLE GREGORY J. FOURATT
UNITED STATES MAGISTRATE JUDGE